

**IC 31-17**

**ARTICLE 17. FAMILY LAW: CUSTODY AND  
VISITATION RIGHTS**

**IC 31-17-1**

**Chapter 1. General Provisions**

**IC 31-17-1-1**

Sec. 1. This chapter, IC 31-17-2, IC 31-17-4, IC 31-17-6, and IC 31-17-7 shall be construed and applied to promote the purpose and policy of this chapter, IC 31-17-2, IC 31-17-4, IC 31-17-6, and IC 31-17-7.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-1-2**

Sec. 2. The purpose and policy of this chapter, IC 31-17-2, IC 31-17-4, IC 31-17-6, and IC 31-17-7 are to provide for child custody.

*As added by P.L.1-1997, SEC.9.*

**IC 31-14-1.5**

**Chapter 1.5. Security to Secure Child Support, Custody, and Visitation Rights**

**IC 31-14-1.5-1**

Sec. 1. A bond required under this article to secure the obligation of child support, enforcement of a custody order, or enforcement of a visitation order must:

- (1) be in writing; and
- (2) be secured by:
  - (A) at least one (1) resident freehold surety; or
  - (B) a commercial insurance company.

*As added by P.L.171-2001, SEC.1.*

**IC 31-14-1.5-2**

Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:

STATE OF INDIANA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )  
 )  
 )  
IN THE MATTER OF: )  
 )  
 )  
Name of Parent (As the Principal) )  
 )  
Name of Parent (As the Oblige) )  
 )  
 )  
CHILD: )  
 )  
Name of Child )  
 )

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto \_\_\_\_\_, as Oblige, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment of which well and truly to be made we hereby bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, an Order was duly made and entered by the above Court in the State of Indiana, County of \_\_\_\_\_, dated \_\_\_\_\_, defining custody, visitation, and support rights regarding the named children.

NOW THEREFORE, the conditions of this obligation are such that:

1. No right of action on this bond shall be granted for the use or benefit of any individual, partnership, corporation, or other entity, other than the named Oblige.
2. It is agreed that neither this bond nor the obligation of this bond, nor any interest in this bond, may be assigned without the prior express written consent of the Surety.
3. Payment under this bond shall be conditioned upon the

Obligee's, or the representative of the Obligee's filing a motion with the court seeking a declaration of forfeiture of the bond and the Court's finding and entry of a final judgment ordering the Principal and Surety to make such payment. A certified copy of the filing shall be provided to the Surety at its address of record. The Surety shall make payment within thirty (30) days of receiving notification of the final judgment directly to a Trustee appointed by the Court who shall administer the funds in a fiduciary capacity.

4. The Surety shall not be liable hereunder for any amount larger than the face amount of this bond.
5. This bond and the obligation hereunder shall terminate and be of no further effect if the Court order requiring it is modified in any way without the Surety's consent, expires, or this cause is removed to another jurisdiction.
6. The Surety may file a motion with the Court for discharge of this bond and its obligation hereunder for any good cause. Good cause includes, but is not limited to, misrepresentation or fraud in the initial application for this bond, nonpayment of premium, loss of collateral, or resignation of the Indemnitor. The Surety shall give notice of any such motion to the Obligee.

NOW THEREFORE, if the Principal faithfully complies with the requirements and conditions of the Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this \_\_\_\_ day of \_\_\_\_, 20\_\_.

Principal:      Surety:

\_\_\_\_\_  
(Name and address of Principal)

\_\_\_\_\_  
(Name and address of Surety)

\_\_\_\_\_  
(Signature of Principal)

\_\_\_\_\_  
(Countersigned by attorney-in-fact)

\_\_\_\_\_  
(Surety seal)

Witness:

*As added by P.L.171-2001, SEC.1.*

### **IC 31-14-1.5-3**

Sec. 3. Upon forfeiture, the proceeds of the security, a bond, or other guarantee ordered to secure the obligation of child support, enforcement of a custody order, or enforcement of a visitation order under this article may only be used to:

- (1) reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order, if the security, bond, or guarantee covers custody or visitation, or both; or
- (3) reimburse reasonable fees and court costs to the court

appointed trustee.  
*As added by P.L.171-2001, SEC.1.*

**IC 31-14-1.5-4**

Sec. 4. Upon forfeiture, the proceeds of security, a bond, or other guarantee ordered to secure the obligation of child support, enforcement of a custody order, or enforcement of a visitation order under this article that are not applied to the expenses described in section 3 of this chapter must be applied toward:

- (1) the child's higher education; or
- (2) the support and maintenance of the child.

*As added by P.L.171-2001, SEC.1.*

## **IC 31-17-2**

### **Chapter 2. Actions for Child Custody and Modification of Child Custody Orders**

#### **IC 31-17-2-1**

Sec. 1. Jurisdiction of a child custody proceeding under:

- (1) this chapter, IC 31-17-4, IC 31-17-6, and IC 31-17-7; or
- (2) IC 31-17-3;

shall be determined under IC 31-17-3.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-2**

Sec. 2. Proceedings under this chapter, IC 31-17-4, IC 31-17-6, and IC 31-17-7 must comply with the Indiana Rules of Civil Procedure.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-3**

Sec. 3. A child custody proceeding is commenced in the court by:

- (1) a parent by filing a petition under IC 31-15-2-4, IC 31-15-3-4, or IC 31-16-2-3; or
- (2) a person other than a parent by filing a petition seeking a determination of custody of the child.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-4**

Sec. 4. If the party seeking custody intends to move the party's residence:

- (1) at the time of or after the granting of a final order under IC 31-15-2-16, IC 31-15-3-9, or IC 31-16-2-8 (or IC 31-1-11.5-9 before its repeal); and
- (2) to a place:
  - (A) outside Indiana; or
  - (B) at least one hundred (100) miles from the residence specified in the party's pleadings;

the party must file a notice of that intent with the clerk of the court and send a copy of the notice to the other party.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-5**

Sec. 5. A responsive pleading or a counter petition may be filed under this chapter, IC 31-17-4, IC 31-17-6, or IC 31-17-7.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-6**

Sec. 6. Custody proceedings must receive priority in being set for hearing.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-7**

Sec. 7. The court without a jury shall determine questions of law and fact.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-2-8**

Sec. 8. The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
  - (A) the child's parent or parents;
  - (B) the child's sibling; and
  - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
  - (A) home;
  - (B) school; and
  - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

*As added by P.L.1-1997, SEC.9. Amended by P.L.96-1999, SEC.7.*

**IC 31-17-2-8.5**

Sec. 8.5. (a) This section applies only if the court finds by clear and convincing evidence that the child has been cared for by a de facto custodian.

(b) In addition to the factors listed in section 8 of this chapter, the court shall consider the following factors in determining custody:

- (1) The wishes of the child's de facto custodian.
- (2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.
- (3) The intent of the child's parent in placing the child with the de facto custodian.
- (4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent now seeking custody to:
  - (A) seek employment;
  - (B) work; or
  - (C) attend school.

(c) If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding.

(d) The court shall award custody of the child to the child's de facto custodian if the court determines that it is in the best interests of the

child.

(e) If the court awards custody of the child to the child's de facto custodian, the de facto custodian is considered to have legal custody of the child under Indiana law.

*As added by P.L.96-1999, SEC.8.*

#### **IC 31-17-2-9**

Sec. 9. (a) The court may interview the child in chambers to ascertain the child's wishes.

(b) The court may permit counsel to be present at the interview. If counsel is present:

- (1) a record may be made of the interview; and
- (2) the interview may be made part of the record for purposes of appeal.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-10**

Sec. 10. (a) The court may seek the advice of professional personnel even if the professional personnel are not employed on a regular basis by the court. The advice shall be given in writing and made available by the court to counsel upon request.

(b) Counsel may call for cross-examination of any professional personnel consulted by the court.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-11**

Sec. 11. (a) If, in a proceeding for custody or modification of custody under IC 31-15, this chapter, IC 31-17-4, IC 31-17-6, or IC 31-17-7, the court:

(1) requires supervision during the noncustodial parent's visitation privileges; or

(2) suspends the noncustodial parent's visitation privileges;

the court shall enter a conditional order naming a temporary custodian for the child.

(b) A temporary custodian named by the court under this section receives temporary custody of a child upon the death of the child's custodial parent.

(c) Upon the death of a custodial parent, a temporary custodian named by a court under this section may petition the court having probate jurisdiction over the estate of the child's custodial parent for an order under IC 29-3-3-6 naming the temporary custodian as the temporary guardian of the child.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-12**

Sec. 12. (a) In custody proceedings after evidence is submitted upon the petition, if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by any of the following:

- (1) The court social service agency.

- (2) The staff of the juvenile court.
- (3) The local probation department or the county office of family and children.
- (4) A private agency employed by the court for the purpose.
- (5) A guardian ad litem or court appointed special advocate appointed for the child by the court under IC 31-17-6 (or IC 31-1-11.5-28 before its repeal).

(b) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian. However, the child's consent must be obtained if the child is of sufficient age and capable of forming rational and independent judgments. If the requirements of subsection (c) are fulfilled, the investigator's report:

- (1) may be received in evidence at the hearing; and
- (2) may not be excluded on the grounds that the report is hearsay or otherwise incompetent.

(c) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days before the hearing. The investigator shall make the following available to counsel and to any party not represented by counsel:

- (1) The investigator's file of underlying data and reports.
- (2) Complete texts of diagnostic reports made to the investigator under subsection (b).
- (3) The names and addresses of all persons whom the investigator has consulted.

(d) Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party to the proceeding may not waive the party's right of cross-examination before the hearing.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-13**

Sec. 13. The court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-14**

Sec. 14. An award of joint legal custody under section 13 of this chapter does not require an equal division of physical custody of the child.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-15**

Sec. 15. In determining whether an award of joint legal custody under section 13 of this chapter would be in the best interest of the



child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:

- (1) the fitness and suitability of each of the persons awarded joint custody;
- (2) whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare;
- (3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age; and
- (4) whether the child has established a close and beneficial relationship with both of the persons awarded joint custody;
- (5) whether the persons awarded joint custody:
  - (A) live in close proximity to each other; and
  - (B) plan to continue to do so; and
- (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-16**

Sec. 16. Upon:

- (1) the court's own motion;
- (2) the motion of a party;
- (3) the motion of the child; or
- (4) the motion of the child's guardian ad litem;

the court may order the custodian or the joint custodians to obtain counseling for the child under such terms and conditions as the court considers appropriate.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-17**

Sec. 17. (a) Except:

- (1) as otherwise agreed by the parties in writing at the time of the custody order; and
- (2) as provided in subsection (b);

the custodian may determine the child's upbringing, including the child's education, health care, and religious training.

(b) If the court finds after motion by a noncustodial parent that, in the absence of a specific limitation of the custodian's authority, the child's:

- (1) physical health would be endangered; or
- (2) emotional development would be significantly impaired;

the court may specifically limit the custodian's authority.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-18**

IC 31-17-2-18 Sec. 18. If both parents or all contestants agree to the order or if the court finds that, in the absence of the order, the child's physical health might be endangered or the child's emotional

development significantly impaired, the court may order:

- (1) the court social service agency;
- (2) the staff of the juvenile court;
- (3) the local probation department;
- (4) the county office of family and children; or
- (5) a private agency employed by the court for that purpose;

to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-19**

Sec. 19. The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court considers necessary to determine the best interests of the child.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-20**

Sec. 20. If the court finds it necessary to protect the child's welfare that the record of any interview, a report, or an investigation in a custody proceeding not be a public record, the court may make an appropriate order accordingly.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-21**

Sec. 21. (a) The court may not modify a child custody order unless:

- (1) the modification is in the best interests of the child; and
- (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8 and, if applicable, section 8.5 of this chapter.

(b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

(c) The court shall not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described by section 8 and, if applicable, section 8.5 of this chapter.

*As added by P.L.1-1997, SEC.9. Amended by P.L.96-1999, SEC.9.*

#### **IC 31-17-2-21.5**

Sec. 21.5. The court may provide in:

- (1) a custody order; or
- (2) a modification to a custody order;

for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the custody order.

*As added by P.L.171-2001, SEC.11.*

#### **IC 31-17-2-21.7**

Sec. 21.7. (a) The court shall consider requiring security, a bond, or another guarantee under section 21.5 of this chapter if the court makes a finding under subdivision (1), (2), (4), or (7) by clear and convincing

evidence. If the court makes a finding under subdivision (1), (2), (4), or (7), the court shall also consider subdivisions (3), (5), (6), (8), and (9) in determining the amount of security, bond, or other guarantee. In making a determination under this section, the court shall consider the following:

- (1) Whether a party has previously taken a child out of Indiana or another state in violation of a custody or visitation order.
- (2) Whether a party has previously threatened to take a child out of Indiana or another state in violation of a custody or visitation order.
- (3) Whether a party has strong ties to Indiana.
- (4) Whether a party:
  - (A) is a citizen of another country;
  - (B) has strong emotional or cultural ties to the other country;
  - and
  - (C) has indicated or threatened to take a child out of Indiana to the other country.
- (5) Whether a party has friends or family living outside Indiana.
- (6) Whether a party does not have a financial reason to stay in Indiana, such as whether the party is unemployed, able to work anywhere, or is financially independent.
- (7) Whether a party has engaged in planning that would facilitate removal from Indiana, such as quitting a job, selling the party's primary residence, terminating a lease, closing an account, liquidating other assets, hiding or destroying documents, applying for a passport, applying for a birth certificate, or applying for school or medical records.
- (8) Whether a party has a history of marital instability, a lack of parental cooperation, domestic violence, or child abuse.
- (9) Whether a party has a criminal record.

After considering evidence, the court shall issue a written determination of security, bond, or other written guarantee supported by findings of fact and conclusions of law.

(b) If a motion for change of judge or change of venue is filed, the court may, before a determination of change of judge or change of venue, consider security, bond, or other guarantee under this chapter. *As added by P.L.171-2001, SEC.12.*

#### **IC 31-17-2-22**

Sec. 22. An intentional violation by a custodial parent of an injunction or a temporary restraining order issued under IC 31-17-4-4 or IC 31-17-4-5 (or IC 31-1-11.5-26 before its repeal) may be considered a relevant factor under section 8 of this chapter that the court must consider in a proceeding for a custody modification under section 21 of this chapter.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-23**

Sec. 23. (a) If an individual who has been awarded custody of a child under this chapter intends to move to a residence:

- (1) other than a residence specified in the custody order; and

(2) that is outside Indiana or at least one hundred (100) miles from the individual's county of residence;  
the individual must file a notice of the intent to move with the clerk of the court that issued the custody order and send a copy of the notice to a parent who was not awarded custody and who has been granted visitation rights under IC 31-17-4 (or IC 31-1-11.5-24 before its repeal).

(b) Upon request of either party, the court shall set the matter for a hearing for the purposes of reviewing and modifying, if appropriate, the custody, visitation, and support orders. The court shall take into account the following in determining whether to modify the custody, visitation, and support orders:

(1) The distance involved in the proposed change of residence.

(2) The hardship and expense involved for noncustodial parents to exercise visitation rights.

(c) Except in cases of extreme hardship, the court may not award attorney's fees.

*As added by P.L.1-1997, SEC.9. Amended by P.L.96-1999, SEC.10.*

#### **IC 31-17-2-24**

Sec. 24. (a) If either party to the custody order applies for a passport for the child, the party who applies for the child's passport shall do the following not less than ten (10) days before applying for the child's passport:

(1) File a notice of the passport application with the clerk of the court that issued the custody order.

(2) Send a copy of the notice to the other party.

(b) The parties may jointly agree in writing to waive the requirements of subsection (a).

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-2.4****Chapter 2.4. Mediation****IC 31-17-2.4-1**

Sec. 1. Whenever the court issues an order under this article, other than an ex parte order, the court shall determine whether the proceeding should be referred to mediation. In making this determination, the court shall consider:

- (1) the ability of the parties to pay for the mediation services; and
- (2) whether mediation is appropriate in helping the parties resolve their disputes.

*As added by P.L.199-1997, SEC.3.*

**IC 31-17-2.4-2**

Sec. 2. When a case is ordered to mediation, the case shall be placed on the court docket for final hearing. The mediation process must be completed not later than sixty (60) days after the mediation order is entered. However, the sixty (60) day period may be extended by the court upon the court's own motion, upon agreement of the parties, or upon the recommendation of the mediator, but may not be extended beyond the date set for final hearing. Upon completion of the mediation process, the mediator shall promptly file the mediation report.

*As added by P.L.199-1997, SEC.3.*

## **IC 31-17-3**

### **Chapter 3. Uniform Child Custody Jurisdiction Law**

#### **IC 31-17-3-1**

Sec. 1. Purposes and Construction of Law. (a) The general purposes of this law are to:

- (1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
- (2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;
- (3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that the courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;
- (4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;
- (5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;
- (6) avoid re-litigation of custody decisions of other states in this state insofar as feasible;
- (7) facilitate the enforcement of custody decrees of other states; and
- (8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

(b) This chapter shall be construed to promote the general purposes stated in this section.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-2**

Sec. 2. Definitions. As used in this chapter:

- (1) "contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;
- (2) "custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;
- (3) "custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage, but does not include child in need of services proceedings;
- (4) "decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification

decree;

(5) "home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least six (6) consecutive months, and in the case of a child less than six (6) months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six (6) month or other period;

(6) "initial decree" means the first custody decree concerning a particular child;

(7) "modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "physical custody" means actual possession and control of a child;

(9) "person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "state" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-3-3**

Sec. 3. Jurisdiction. (a) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) this state (A) is the home state of the child at the time of commencement of the proceeding, or (B) had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(2) it is in the best interest of the child that a court of this state assume jurisdiction because (A) the child and his parents, or the child and at least one (1) contestant, have a significant connection with this state, and (B) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(3) the child is physically present in this state and the child has been abandoned; or

(4) (A) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (B) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a) physical presence in this state of the child, or of the child and one (1) of the contestants, is not alone sufficient to confer jurisdiction on a court of

this state to make a child custody determination.

(c) Physical presence of the child, while desirable, is not prerequisite for jurisdiction to determine his custody.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-4**

Sec. 4. Notice and Opportunity to be Heard. Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to section 5 of this chapter.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-5**

Sec. 5. Notice to Persons Outside this State; Submission to Jurisdiction. (a) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

- (1) by personal delivery outside this state in the manner prescribed for service of process within this state;
- (2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;
- (3) by any form of mail addressed to the person to be served and requesting a receipt; or
- (4) as directed by the court.

(b) Notice under this section shall be served, mailed, or delivered, at least twenty (20) days before any hearing in this state.

(c) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-6**

Sec. 6. Simultaneous Proceedings in Other States. (a) A court of this state shall not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under section 9 of this chapter and shall consult the child



custody registry established under section 16 of this chapter concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 19 through 22 of this chapter. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-3-7**

Sec. 7. Inconvenient Forum. (a) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

- (1) if another state is or recently was the child's home state;
- (2) if another state has a closer connection with the child and his family or with the child and one (1) or more of the contestants;
- (3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
- (4) if the parties have agreed on another forum which is no less appropriate; and
- (5) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section 1 of this chapter.

(d) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the

proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for dissolution of marriage or another proceeding while retaining jurisdiction over the dissolution of marriage or other proceeding.

(g) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this state shall inform the original court of this fact.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-3-8**

Sec. 8. Denial of Jurisdiction. (a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-3-9**

Sec. 9. (a) Every party in a custody proceeding, other than an action for dissolution of marriage, in his first pleading or in an affidavit

attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

- (1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;
- (2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and
- (3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-10**

Sec. 10. Additional Parties. If the court learns from information furnished by the parties pursuant to section 9 of this chapter or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state he shall be served with process or otherwise notified in accordance with section 5 of this chapter.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-11**

Sec. 11. Appearance of the Parties and the Child. (a) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child.

(b) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child the court may order that the notice given under section 5 of this chapter include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this state is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under

the circumstances.  
*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-12**

Sec. 12. Binding Force and Res Judicata Effect of Custody Decree. A custody decree rendered by a court of this state which had jurisdiction under section 3 of this chapter binds all parties who have been served in this state or notified in accordance with section 5 of this chapter or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-13**

Sec. 13. Recognition of Out-of-State Custody Decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of this chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-14**

Sec. 14. Modification of Custody Decree of Another State. (a) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (1) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree and (2) the court of this state has jurisdiction.

(b) If a court of this state is authorized under section 8(a) of this chapter to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section 22 of this chapter.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-15**

Sec. 15. Filing and Enforcement of Custody Decree of Another State. (a) A certified copy of a custody decree of another state may be filed in the office of the clerk of any circuit court of this state. The clerk shall treat the decree in the same manner as a custody decree of a circuit or superior court, or any court of this state which is competent to decide child custody matters. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-16**

Sec. 16. Registry of Out-of-State Custody Decrees and Proceedings. The clerk of each circuit court shall maintain a registry in which he shall enter the following:

- (1) certified copies of custody decrees of other states received for filing;
- (2) communications as to the pendency of custody proceedings in other states;
- (3) communications concerning a finding of inconvenient forum by a court of another state; and
- (4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-17**

Sec. 17. Certified Copies of Custody Decree. The clerk of the circuit court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-18**

Sec. 18. Taking Testimony in Another State. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representatives of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-19**

Sec. 19. Hearings and Studies in Another State; Orders to Appear.

(a) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies (an investigation and report pursuant to IC 31-17-2-12) made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in

compliance with the request. The cost of the services may be assessed against the parties, or, if necessary, ordered paid by the county.

(b) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-20**

Sec. 20. Assistance to Courts of Other States. (a) Upon request of the court of another state, the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(b) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(c) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-21**

Sec. 21. Preservation of Documents for Use in Other States. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child becomes twenty-one (21) years of age. Upon appropriate request of the court of another state the court shall forward to the other court certified copies of any or all of such documents.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-22**

Sec. 22. Request for Court Records of Another State. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 21 of this chapter.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-23**

Sec. 23. The general policies of this chapter extend to the

international area. Except as provided in section 25 of this chapter, the provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-24**

Sec. 24. Priority. Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this chapter the case shall be given calendar priority and handled expeditiously.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-3-25**

Sec. 25. (a) Notwithstanding sections 3, 7, and 8 of this chapter, a court of this state has jurisdiction to make a child custody and support determination by modification decree if:

- (1) the child is a citizen of the United States;
- (2) a determination concerning the custody of the child has been made by a court in another nation;
- (3) the child is physically present in this state; and
- (4) there is a reasonable probability that the child will be moved outside of the United States if a determination concerning the custody of the child made by a court in another nation is given effect in the United States.

(b) If a court has jurisdiction to make a child custody and support determination under subsection (a), a parent or guardian of a child, may file a petition seeking a modification decree concerning the custody and support of the child. The petition must be entitled "In re the modification of a determination concerning the custody and support of \_\_\_\_\_". The petition shall be verified and must set forth:

- (1) the relationship of the parties;
- (2) the present residence of each party;
- (3) the name, age, and address of each child who will be affected by the modification decree sought under this subsection;
- (4) a statement that the court has jurisdiction to make a child custody and support determination under subsection (a); and
- (5) the relief sought.

A responsive pleading or a counter petition may be filed under this subsection. Proceedings provided for in this subsection must comply with the Indiana Rules of Trial Procedure.

(c) The court shall hold a hearing on the petition filed under subsection (b). At the hearing, the court shall hear evidence to determine whether the child custody and support determination should be modified. In making this determination, the court shall base its decision upon the best interests of the child, considering all relevant factors, including the factors set out in IC 31-16-6-1.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-3.5**

**Chapter 3.5. Security to Secure Custody and Visitation Orders**

**IC 31-17-3.5-1**

Sec. 1. A bond required under this article to secure enforcement of a custody order or visitation order must:

- (1) be in writing; and
- (2) be secured by:
  - (A) at least one (1) resident freehold surety; or
  - (B) a commercial insurance company.

*As added by P.L.171-2001, SEC.10.*

**IC 31-17-3.5-2**

Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:

STATE OF INDIANA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )  
 )  
 )  
IN THE MATTER OF: )  
 )  
Name of Parent (As the Principal) )  
 )  
Name of Parent (As the Oblige) )  
 )  
 )  
CHILD: )  
 )  
Name of Child )  
 )

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto \_\_\_\_\_, as Oblige, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment of which well and truly to be made we hereby bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, an Order was duly made and entered by the above Court in the State of Indiana, County of \_\_\_\_\_, dated \_\_\_\_\_, defining custody, visitation, and support rights regarding the named children.

NOW THEREFORE, the conditions of this obligation are such that:

1. No right of action on this bond shall be granted for the use or benefit of any individual, partnership, corporation, or other entity, other than the named Oblige.
2. It is agreed that neither this bond nor the obligation of this bond, nor any interest in this bond, may be assigned without the prior express written consent of the Surety.
3. Payment under this bond shall be conditioned upon the Oblige's, or the representative of the Oblige's filing a motion with the court seeking a declaration of forfeiture of



the bond and the Court's finding and entry of a final judgment ordering the Principal and Surety to make such payment. A certified copy of the filing shall be provided to the Surety at its address of record. The Surety shall make payment within thirty (30) days of receiving notification of the final judgment directly to a Trustee appointed by the Court who shall administer the funds in a fiduciary capacity.

4. The Surety shall not be liable hereunder for any amount larger than the face amount of this bond.
5. This bond and the obligation hereunder shall terminate and be of no further effect if the Court order requiring it is modified in any way without the Surety's consent, expires, or this cause is removed to another jurisdiction.
6. The Surety may file a motion with the Court for discharge of this bond and its obligation hereunder for any good cause. Good cause includes, but is not limited to, misrepresentation or fraud in the initial application for this bond, nonpayment of premium, loss of collateral, or resignation of the Indemnitor. The Surety shall give notice of any such motion to the Obligee.

NOW THEREFORE, if said Principal shall faithfully comply with the requirements and conditions of said Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this \_\_\_\_ day of \_\_\_\_, 20\_\_.

Principal:    Surety:

\_\_\_\_\_  
(Name and address of Principal)

\_\_\_\_\_  
(Name and address of Surety)

\_\_\_\_\_  
(Signature of Principal)

\_\_\_\_\_  
(Countersigned by attorney-in-fact)

\_\_\_\_\_  
(Surety seal)

Witness:

*As added by P.L.171-2001, SEC.10.*

### **IC 31-17-3.5-3**

Sec. 3. Upon forfeiture, the proceeds of security, a bond, or other guarantee ordered to secure enforcement of a custody order or visitation order under this article may only be used to:

- (1) reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order; or
- (3) reimburse reasonable fees and court costs to the court appointed trustee.

*As added by P.L.171-2001, SEC.10.*

### **IC 31-17-3.5-4**

Sec. 4. Upon forfeiture, the proceeds of the security, a bond, or other guarantee ordered to secure enforcement of a custody order or visitation order under this article that are not applied to the expenses described in section 3 of this chapter must be applied toward:

(1) the child's higher education; or

(2) the support and maintenance of the child.

*As added by P.L.171-2001, SEC.10.*

#### **IC 31-17-4**

##### **Chapter 4. Visitation Rights of Noncustodial Parent**

#### **IC 31-17-4-1**

Sec. 1. A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-4-2**

Sec. 2. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. However, the court shall not restrict a parent's visitation rights unless the court finds that the visitation might endanger the child's physical health or significantly impair the child's emotional development.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-4-2.5**

Sec. 2.5. The court may provide in:

- (1) a visitation order; or
- (2) a modification to a visitation order;

for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the provisions of the visitation order.

*As added by P.L.171-2001, SEC.13.*

#### **IC 31-17-4-3**

Sec. 3. (a) In any action filed to enforce or modify an order granting or denying visitation rights, a court may award:

- (1) reasonable attorney's fees;
- (2) court costs; and
- (3) other reasonable expenses of litigation.

(b) In determining whether to award reasonable attorney's fees, court costs, and other reasonable expenses of litigation, the court may consider among other factors:

- (1) whether the petitioner substantially prevailed and whether the court found that the respondent knowingly or intentionally violated an order granting or denying rights; and
- (2) whether the respondent substantially prevailed and the court found that the action was frivolous or vexatious.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-4-4**

Sec. 4. A noncustodial parent who:

- (1) has been granted visitation rights with a child who lives with the custodial parent;
- (2) regularly pays support ordered by a court for the child; and
- (3) is barred by a custodial parent from exercising visitation rights ordered for the noncustodial parent and the child;

may file, in the court that has jurisdiction over the dissolution of marriage, an application for a permanent injunction against the custodial parent under Rule 65 of the Indiana Rules of Trial Procedure. *As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-4-5**

Sec. 5. (a) If an application for an injunction has been filed under section 4 of this chapter (or IC 31-1-11.5-26 before its repeal), the court may grant, without notice, upon affidavit of the noncustodial parent, a temporary restraining order restraining the custodial parent from further violation of the visitation order.

(b) In the affidavit, the noncustodial parent must state under penalties for perjury that:

- (1) the noncustodial parent has been granted visitation rights with the child; and
- (2) the noncustodial parent regularly pays the support ordered by a court for the child.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-4-6**

Sec. 6. A hearing upon the restraining order must be held at the earliest convenience of the court.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-4-7**

Sec. 7. (a) This section does not apply to an order under section 2.5 of this chapter.

(b) A court may not require an applicant for a temporary restraining order or an injunction under section 4 of this chapter (or IC 31-1-11.5-26 before its repeal) to give security.

*As added by P.L.1-1997, SEC.9. Amended by P.L.171-2001, SEC.14.*

#### **IC 31-17-4-8**

Sec. 8. A court that finds an intentional violation without justifiable cause by a custodial parent of an injunction or a temporary restraining order issued under this chapter (or IC 31-1-11.5-26 before its repeal):

- (1) shall find the custodial parent in contempt of court;
- (2) shall order the exercise of visitation that was not exercised due to the violation under this section at a time the court considers compatible with the schedules of the noncustodial parent and the child;
- (3) may order payment by the custodial parent of reasonable attorney's fees, costs, and expenses to the noncustodial parent; and
- (4) may order the custodial parent to perform community restitution or service without compensation in a manner specified by the court.

*As added by P.L.1-1997, SEC.9. Amended by P.L.32-2000, SEC.19.*

#### **IC 31-17-4-9**

Sec. 9. The remedies in this chapter are in addition to and do not

limit other civil or criminal remedies available to the noncustodial parent.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-4-10**

Sec. 10. A noncustodial parent who misses visitation as the result of participation in an activity of:

(1) the Indiana National Guard; or

(2) a reserve component of the armed forces of the United States;

may make up the lost visitation as provided in IC 10-2-4-23.

*As added by P.L.103-1997, SEC.4.*

## **IC 31-17-5**

### **Chapter 5. Grandparent's Visitation**

#### **IC 31-17-5-1**

Sec. 1. (a) A child's grandparent may seek visitation rights if:

- (1) the child's parent is deceased;
- (2) the marriage of the child's parents has been dissolved in Indiana; or
- (3) subject to subsection (b), the child was born out of wedlock.

(b) A court may not grant visitation rights to a paternal grandparent of a child who is born out of wedlock under subsection (a)(3) if the child's father has not established paternity in relation to the child.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-5-2**

Sec. 2. (a) The court may grant visitation rights if the court determines that visitation rights are in the best interests of the child.

(b) In determining the best interests of the child under this section, the court may consider whether a grandparent has had or has attempted to have meaningful contact with the child.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-5-3**

Sec. 3. A proceeding for grandparent's visitation must be commenced by the filing of a petition entitled, "In Re the visitation of \_\_\_\_\_". The petition must:

- (1) be filed by a grandparent entitled to receive visitation rights under this chapter;
- (2) be verified; and
- (3) set forth the following:
  - (A) The names and relationship of:
    - (i) the petitioning grandparent or grandparents;
    - (ii) each child with whom visitation is sought; and
    - (iii) the custodial parent or guardian of each child.
  - (B) The present address of each person named in clause (A).
  - (C) The date of birth of each child with whom visitation is sought.
  - (D) The status under section 1 of this chapter upon which the grandparent seeks visitation.
  - (E) The relief sought.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-5-4**

Sec. 4. A grandparent seeking visitation rights shall file a petition requesting reasonable visitation rights:

- (1) in a circuit or superior court of the county in which the child resides in a case described in section 1(a)(1), 1(a)(3), or 10 of this chapter; or
- (2) in the court having jurisdiction over the dissolution of the parents' marriage in a case described in section 1(a)(2) of this chapter.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-5-5**

Sec. 5. Whenever a petition is filed, a copy of the petition, together with a copy of a summons, shall be served upon the custodial and noncustodial parent or guardian of each child with whom visitation is sought in the same manner as service of summons in civil actions generally.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-5-6**

Sec. 6. Upon hearing evidence in support of and opposition to a petition filed under this chapter, the court shall enter a decree setting forth the court's findings and conclusions.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-5-7**

Sec. 7. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-5-8**

Sec. 8. (a) This section applies to a child born out of wedlock.

(b) Visitation rights provided for in section 1 or 10 of this chapter survive the establishment of paternity of a child by a court proceeding other than an adoption proceeding.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-5-9**

Sec. 9. Visitation rights provided for in section 1 or 10 of this chapter survive the adoption of the child by any of the following:

- (1) A stepparent.
- (2) A person who is biologically related to the child as:
  - (A) a grandparent;
  - (B) a sibling;
  - (C) an aunt;
  - (D) an uncle;
  - (E) a niece; or
  - (F) a nephew.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-5-10**

Sec. 10. If the marriage of the child's parents has been dissolved in another state, the child's maternal or paternal grandparent may seek visitation rights if:

- (1) the custody decree entered in the action for dissolution of marriage does not bind the grandparent under IC 31-17-3-12; and
- (2) an Indiana court would have jurisdiction under IC 31-17-3-3 or IC 31-17-3-14 to grant visitation rights to the grandparent in a modification decree.

*As added by P.L.1-1997, SEC.9.*



## **IC 31-17-6**

### **Chapter 6. Appointment of Guardians Ad Litem and Court Appointed Special Advocates**

#### **IC 31-17-6-1**

Sec. 1. A court in a proceeding under IC 31-17-2, IC 31-17-4, this chapter, or IC 31-17-7 may appoint a guardian ad litem, a court appointed special advocate, or both, for a child at any time.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-2**

Sec. 2. A court may not appoint a party to the proceedings, the party's employee, or the party's representative as the:

- (1) guardian ad litem;
- (2) court appointed special advocate;
- (3) guardian ad litem program; or
- (4) court appointed special advocate program;

for a child who is involved in the proceedings.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-3**

Sec. 3. A guardian ad litem or court appointed special advocate shall represent and protect the best interests of the child. A guardian ad litem or court appointed special advocate serves until the court enters an order for removal.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-4**

Sec. 4. The guardian ad litem or the court appointed special advocate, or both, are considered officers of the court for the purpose of representing the child's interests.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-5**

Sec. 5. The guardian ad litem or the court appointed special advocate may be represented by an attorney. If necessary to protect the child's interests, the court may appoint an attorney to represent the guardian ad litem or the court appointed special advocate.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-6**

Sec. 6. A guardian ad litem or court appointed special advocate appointed by a court under this chapter may subpoena witnesses and present evidence regarding:

- (1) the supervision of the action; or
- (2) any investigation and report that the court requires of the guardian ad litem or court appointed special advocate.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-7**

IC 31-17-6-7 Sec. 7. The court may order a guardian ad litem or court appointed special advocate appointed by a court under this chapter (or IC 31-1-11.5-28 before its repeal) to exercise continuing supervision over the child to assure that the custodial or visitation terms of an order entered by the court under IC 31-17-2 or IC 31-17-4 (or IC 31-1-11.5 before its repeal) are carried out as required by the court.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-8**

Sec. 8. Except for gross misconduct:

- (1) a guardian ad litem;
- (2) a court appointed special advocate;
- (3) an employee of a county guardian ad litem or court appointed special advocate program; or
- (4) a volunteer for a guardian ad litem or court appointed special advocate program;

who performs duties in good faith is immune from any civil liability that may occur as a result of the person's performance.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-9**

Sec. 9. (a) The court may order either or both parents of a child for whom a guardian ad litem or court appointed special advocate is appointed under this chapter to pay a user fee for the services provided under this chapter. The court shall establish one (1) of the following procedures to be used to collect the user fee:

- (1) The court may order the clerk of the court to collect the user fee and deposit the user fee into the county's guardian ad litem fund or court appointed special advocate fund. The fiscal body of the county shall appropriate money collected as user fees under this chapter to the court having jurisdiction over custody actions for the court's use in providing guardian ad litem or court appointed special advocate services, including the costs of representation.

- (2) The court may order either or both parents to pay the user fee to the:

- (A) guardian ad litem program that provided the services; or
- (B) court appointed special advocate program that provided the services.

- (3) The court may order either or both parents to pay the user fee to the individual or attorney guardian ad litem that provided the services.

- (b) Money remaining in a county's:

- (1) guardian ad litem fund; or
- (2) court appointed special advocate fund;

at the end of the county's fiscal year does not revert to any other fund.

(c) If the court orders either or both parents to pay the user fee according to subsection (a)(2) or (a)(3) the program or the individual or attorney guardian ad litem shall report to the court the receipt of payment not later than thirty (30) days after receiving the payment.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-7**

### **Chapter 7. Costs and Attorney's Fees**

#### **IC 31-17-7-1**

Sec. 1. (a) The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under IC 31-17-2, IC 31-17-4, IC 31-17-6, or this chapter and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

(b) The court may order the amount to be paid directly to the attorney, who may enforce the order in the attorney's name.

*As added by P.L.1-1997, SEC.9. Amended by P.L.199-1997, SEC.6.*

#### **IC 31-17-7-2**

Sec. 2. Neither costs nor attorney's fees may be taxed against an agency or its agents that is authorized to maintain proceedings under IC 31-17-2, IC 31-17-4, IC 31-17-6, or this chapter by Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669) and IC 12-17-2-21.

*As added by P.L.1-1997, SEC.9.*